

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

AUG 03 2001

Michael N. Milby, Clerk of Court

IN RE:

VENTURI TECHNOLOGIES, INC.  
Tax I.D. No. 87-0580279,

DEBTOR.

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CASE NO. 01-31443-H4-11

**ORDER CONFIRMING DEBTOR'S RESTATED AND CORRECTED FIRST AMENDED  
PLAN OF REORGANIZATION, AS MODIFIED**

Came on for hearing Venturi Technologies, Inc.'s ("Venturi"), First Amended Plan of Reorganization dated June 5, 2001 and Modification to First Amended Plan filed July 31, 2001 (collectively the "Restated and Amended Plan"). It having been determined after hearing on notice that the requirements for confirmation set forth in Bankruptcy Code section 1129(a) have been satisfied. It is therefore

ORDERED that the Restated and Amended Plan is confirmed pursuant to Bankruptcy Code section 1129(a). A true and correct copy of the confirmed Restated and Amended Plan is attached hereto as Exhibit "A".

Dated this 18<sup>th</sup> day of August, 2001.

  
WILLIAM GREENDYKE  
UNITED STATES BANKRUPTCY JUDGE

ORDER SUBMITTED BY:

Edward L. Ripley  
Baker & Hostetler, LLP  
1000 Louisiana, Suite 2000  
Houston, Texas 77002  
(713) 646-1349  
(713) 751-1717 (Telecopy)

ATTORNEYS FOR VENTURI TECHNOLOGIES, INC.

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United States Courts  
Southern District of Texas  
FILED

AUG 01 2001

Michael N. Milby, Clerk

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
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IN RE:

VENTURI TECHNOLOGIES, INC.  
Tax I.D. No. 87-0580279

Debtor.

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CASE NO. 01-31443-H4-11

**DEBTOR'S RESTATED AND CORRECTED  
FIRST AMENDED PLAN OF REORGANIZATION, AS MODIFIED**

The Debtor, Venturi Technologies, Inc. ("Venturi") hereby proposes the following Debtor's Restated and Corrected First Amended Plan of Reorganization, as Modified, pursuant to the provisions of sections 1121 and 1127 of the Bankruptcy Code:

**ARTICLE I**

**DEFINITIONS AND INTERPRETATION**

1.1 Rules of Interpretation. Unless otherwise specified, all Section, Article and Exhibit references in this Plan are to the respective Section in, Article of, or Exhibit to this Plan, as the same may be amended, waived or modified from time to time. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Words denoting the singular number shall include the plural number and vice versa. In construing this Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply. In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

1.2 Definitions. Terms and phrases, whether capitalized or not, that are used and not defined in this Plan, but that are defined in the Bankruptcy Code, have the meanings ascribed to them in the Bankruptcy Code. Unless otherwise provided in this Plan, the following terms (which appear



in this Plan as capitalized terms) have the respective meanings set forth below, and such meanings shall be equally applicable to the singular and plural forms of the terms defined, unless the context otherwise requires.

0.1.1 "Administrative Expense Claim" means a Claim for costs and expenses of administration of the Bankruptcy Cases allowed under sections 503, 507(a)(1) or 507(b) of the Bankruptcy Code, including Claims for taxes entitled to treatment under 507, and approved by Final Order of the Bankruptcy Court, and all fees and costs assessed against the Estates pursuant to 28 U.S.C. § 1930.

0.1.2 "Allowed" means, as it relates to any type of Claim provided for under this Plan, a Claim (i) which has been scheduled as undisputed, noncontingent and liquidated in the Schedules and as to which (a) no proof of Claim has been timely filed, and (b) no objection thereto has been timely filed; (ii) as to which a proof of Claim has been timely filed and either (a) no objection thereto has been timely filed, or (b) such Claim has been allowed (but only to the extent allowed) by a Final Order of the Bankruptcy Court; (iii) which has been expressly allowed under the provisions of this Plan; or (iv) which is an Administrative Expense Claim approved by Final Order of the Bankruptcy Court.

0.1.3 "Assumed Contracts" means the Executory Contracts and Leases to be assumed pursuant to the Plan pursuant to Article X of this Plan and as identified in Exhibit "D" to the Disclosure Statement.



- 0.1.4 "Avoidance Actions" means any and all actions which a trustee, debtor-in-possession or other appropriate party in interest may assert on behalf of the Estate under applicable state statute or Chapter 5 of the Bankruptcy Code, including actions under one or more provisions of sections 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, and 553.
- 0.1.5 "Ballot" means the ballot, the form of which has been approved by the Bankruptcy Court, accompanying the Disclosure Statement provided to each holder of a Claim or Equity Interest entitled to vote to accept or reject this Plan, on which such holder may vote to accept or reject this Plan, make an election to have such holder's Claim treated as a Convenience Claim under this Plan or make an election to have such holder's Claims not treated as a Convenience Claim under this Plan.
- 0.1.6 "Bankruptcy Case" means the bankruptcy case initiated by Venturi when it filed a voluntary petition under chapter 11 of the Bankruptcy Code on February 12, 2001, enumerated as Case No. 01-31443-H4-11.
- 0.1.7 "Bankruptcy Code" means title 11 of the United States Code, section 101, *et seq.*, as now in effect or as hereafter amended.
- 0.1.8 "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas or, if such court ceases to exercise jurisdiction, the court or adjunct thereof that exercises jurisdiction over the Bankruptcy Cases.
- 0.1.9 "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as amended and promulgated under section 2075 of title 28 of the United States Code, together with the local bankruptcy rules for the Bankruptcy Court as



now in effect or as the same may from time to time hereafter be amended.

0.1.10 "Bar Date" means the date set by the Bankruptcy Court as the last day for filing of proofs of Claim in the Bankruptcy Cases, which is May 25, 2001.

0.1.11 "Bridge Loan" means the amount of \$1,500,000.00 lent to Venturi on or about August, 2000 by Carl M. and Marie T. Bouckaert, Daniel Dornier and Bruce Ranck evidenced by promissory notes.

0.1.12 "Business Day" means any day which is not a Saturday, a Sunday or a "legal holiday" within the meaning of Bankruptcy Rule 9006(a).

0.1.13 "Claim" means a claim against the Debtor or its property, as such term is defined in section 101(5) of the Bankruptcy Code.

0.1.14 "Claimant" means the holder of any Claim or Equity Interest entitled to distributions with respect to such Claim or Equity Interest.

0.1.15 "Class" means one of the categories of Claims or Equity Interests established under Article III of this Plan pursuant to section 1122 of the Bankruptcy Code.

0.1.15A "Class 8 Disbursing Agent" will be Mr. Miles D. Harper, III, who will receive the payments from the Reorganized Debtor for the benefit of Class 8 Claimants. In addition, the Class 8 Disbursing Agent will prosecute for the benefit of Class 8 Creditors, all Avoidance Actions and any applicable state law equivalents thereto. The Class 8 Disbursing Agent will have all the powers of a Trustee under Bankruptcy Code section 544. The Class 8 Disbursing Agent will also make the distributions to the holders of Allowed Class 8 Claims. In the event of the death, resignation or removal of the Class



8 Disbursing Agent, the appointment of a successor Class 8 Disbursing Agent will be approved by the Court. Any successor Class 8 Disbursing Agent will be vested with all the rights, privileges, powers and duties of his predecessor.

The Class 8 Disbursing Agent may resign at any time by filing a Notice of Resignation with the Court and such resignation will be effective on the date the Court approves the successor Class 8 Disbursing Agent and such successor assumes his duties as successor Class 8 Disbursing Agent.

0.1.16 "Class 8 Fund" means the fund of \$220,000 plus the net proceeds of Avoidance Actions which shall vest in the Class 8 Disbursing Agent for Pro Rata distribution to holders of Allowed Class 8 Claims pursuant to the terms of this Plan

0.1.17 "Collateral" means any property or interest in property of the Estates subject to a Lien, not otherwise subject to avoidance under the Bankruptcy Code, to secure the payment or performance of a Claim.

0.1.18 "Committee" means the Official Committee of Unsecured Creditors appointed in the Bankruptcy Cases pursuant to section 1102 of the Bankruptcy Code.

0.1.19 "Confirmation Date" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on its docket.

0.1.20 "Confirmation Hearing" means the hearing(s) before the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing(s) may be continued, rescheduled or delayed.

0.1.21 "Confirmation Order" means the order of the Bankruptcy Court confirming



this Plan pursuant to section 1129 of the Bankruptcy Code, as such order may be amended, modified, or supplemented.

0.1.22 "Contingent Claim" means any Claim that has not matured and is dependent upon an event that has not occurred or may never occur.

0.1.23 "Convenience Claim" means any Claim that otherwise would be an Allowed Unsecured Claim against the Debtor in an amount (i) equal to or less than one hundred fifty dollars (\$150) or (ii) greater than one hundred fifty dollars (\$150) but which is reduced to one hundred fifty dollars (\$150) by written election of the holder of such Claim made on a validly executed and timely delivered Ballot.

0.1.24 "Creditor" shall mean the holder of a Claim.

0.1.25 "Debtor" means Venturi Technologies, Inc., as debtor, debtor-in-possession and its Estate.

0.1.26 "Disallowed Claim" means a Claim or portion thereof that (i) has been disallowed by a Final Order; (ii) is identified in the Schedules in an amount of zero dollars or as contingent, unliquidated or disputed and as to which a proof of Claim was not filed by the Bar Date; or (iii) is not identified in the Schedules and as to which no proof of Claim has been filed or deemed filed by the Bar Date.

0.1.27 "Disclosure Statement" means the Disclosure Statement with respect to the Plan, approved by the Bankruptcy Court as containing adequate information for the purpose of dissemination and solicitation of votes on and confirmation

of the Plan, or as it may be altered, amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

0.1.28 "Disputed Claim" means any Claim or any portion thereof which has not become Allowed and which is not a Disallowed Claim. In the event that any part of a Claim is a Disputed Claim, such Claim in its entirety shall be deemed to constitute a Disputed Claim for purposes of distribution under this Plan unless the holder thereof agrees otherwise. Without limiting any of the foregoing, a Claim that is the subject of a pending application, motion, complaint, objection, or any other legal proceeding seeking to disallow, limit, subordinate, reclassify, or estimate such Claim shall be deemed to constitute a Disputed Claim.

0.1.29 "Disputed Claims Reserve" means the reserve account established by the Debtor pursuant to Article VIII of this Plan from which all distributions under this Plan are to be made to the holders of Disputed Claims.

0.1.30 "Distribution Date" means any date on which distributions of cash and other assets are to be made.

0.1.31 "Distribution Reserve" means the reserve account(s) established by the Debtor pursuant to Article VIII of this Plan from which all distributions under the Plan to holders of (i) Allowed Administrative Expense Claims; (ii) Allowed Priority Claims and Allowed Claims in Classes 1 and 2; and (iii) Allowed Convenience Class Claims.

0.1.32 "DIP Lenders" means the lenders MJM Services, LLP, BER Investments,



Ltd., Beaulieu of America, Inc., Entrepreneurial Investors, Ltd. and Greenwich AG. who loaned the Debtor money post-petition as approved by the Bankruptcy Court.

0.1.33 "Effective Date" means the first Business Day immediately following the date on which all of the conditions specified in Section 11 of this Plan are first satisfied or waived.

0.1.34 "Equity Interest" means any ownership interest or share in the Debtor (including, without limitation, all options, warrants or other rights to obtain such an interest or share in the Debtor) whether or not transferable, preferred, common, voting, or denominated "stock" or a similar security.

0.1.35 "Estate" means, collectively, the estate created for the Debtor pursuant to section 541 of the Bankruptcy Code.

0.1.36 "Exculpative Person" means the Debtor, Debtor's Representative, DIP Lenders and DIP Lenders' Representative.

0.1.37 "Executory Contract" means, collectively, "executory contracts" and "unexpired leases" of the Debtor as of the Petition Date as such terms are used within section 365 of the Bankruptcy Code.

0.1.38 "Final Decree" means the final decree entered by the Bankruptcy Court on or after the Effective Date pursuant to Bankruptcy Rule 3022.

0.1.39 "Final Distribution" means the distribution made to Claimants pursuant to the Plan which (i) after giving effect to such distribution, results in remaining assets with a value of five thousand dollars (\$5,000) or less; and (ii) the



Debtor determines to be the final distribution to be made to Claimants pursuant to the Plan.

0.1.40 "Final Distribution Date" means the date of the Final Distribution.

0.1.41 "Final Order" means a judgment, order, ruling, or other decree issued and entered by the Bankruptcy Court or by any state or other federal court or other tribunal having jurisdiction over the subject matter thereof which judgment, order, ruling, or other decree has not been reversed, stayed, modified, or amended and as to which (i) the time to appeal or petition for review, rehearing or certiorari has expired and as to which no appeal or petition for review, rehearing or certiorari is pending; or (ii) any appeal or petition for review, rehearing or certiorari has been finally decided and no further appeal or petition for review, rehearing or certiorari can be taken or granted.

0.1.42 "Franklin Funding" means Franklin Funding, Inc.

0.1.43 "Governmental Unit" means a governmental unit as such term is defined in section 101(27) of the Bankruptcy Code.

0.1.44 "Initial Distribution" means the first distribution of cash made to the holders of Allowed Claims in a given Class from the assets of the estate.

0.1.45 "Initial Distribution Date" means the date on which the Initial Distribution is made.

0.1.46 "Lien" means valid and enforceable lien, mortgage, security interest, pledge, charge, encumbrance, or other legally cognizable security device of any kind, which is not subject to avoidance or subordination under the Bankruptcy Code or other applicable law.



0.1.47 "Mandatory Claims Resolution Procedure" means the provisions of the Plan in Article XIV authorizing a procedure for Claims resolution.

0.1.48 "MPI Note Holders" means Mitchell Martin, Lloyd Peterman, Matt Ikov, Russell DeLabarre, Lanny McNamara, Brian Ritter and Jason DuPuis.

0.1.49 "New Equity" means equity in the Reorganized Debtor.

0.1.50 "Ordinary Course Administrative Claims" shall be limited to Administrative Claims incurred in the ordinary course of the Debtor's business on and after the Petition Date but shall not include: (i) any post-petition obligations which are past due or cure payments; (ii) any fees or expenses of "professional persons" (as that term is used in Section 327 of the Bankruptcy Code) and any expenses, compensation, or reimbursement requested pursuant to subsections 503(b)(2), (3), (4) or (5) of the Bankruptcy Code and any Creditor's Committee members' expenses, which shall be subject to Court approval; (iii) any taxes (including income, sales, use, property or other taxes); (iv) any Claims for breach of contract, tort, or other actionable conduct; and (v) any post-petition obligations incurred under Executory Contracts which are rejected pursuant to this Plan or prior to the Effective Date of the Plan.

0.1.51 "Other Secured Claim" means any Secured Claim other than the DIP Lenders which is senior in priority as of the Petition Date under applicable state law to the Secured Claims of the DIP Lenders with respect to the Collateral securing such Other Secured Claim.



- 0.1.52 "Person" means and includes natural persons, corporations, limited partnerships, general partnerships, joint ventures, trusts, land trusts, business trusts, unincorporated organizations, or other legal entities, irrespective of whether they are governments, agencies or political subdivisions thereof.
- 0.1.53 "Petition Date" means February 12, 2001, with respect to the Debtor.
- 0.1.54 "Plan" means this Chapter 11 plan, either in its present form or as it may be altered, amended, modified or supplemented from time to time in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.
- 0.1.55 "Priority Claim" means a Claim entitled to priority in payment under section 507(a) of the Bankruptcy Code, excluding any Claim that is an Administrative Expense Claim or a Priority Tax Claim.
- 0.1.56 "Priority Tax Claim" means a Claim entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code.
- 0.1.57 "Professional" means any Person employed or to be compensated pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code.
- 0.1.58 "Professional Claim" means a Claim by a Professional for compensation and/or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code in connection with an application made to the Bankruptcy Court in the Bankruptcy Cases.
- 0.1.59 "Pro Rata Share" means, with respect to any distribution to a Class under this Plan as of any particular Distribution Date, proportionate sharing pursuant to which the ratio of the cumulative amount of all funds distributed on account of an Allowed Claim to the amount of such Allowed Claim is the same as the



ratio of the cumulative amount distributed to such Class to the total amount of all Allowed Claims and Disputed Claims classified into such Class.

0.1.60 "Representative" means, with respect to any specified entity, the officers, directors (or functional equivalent, if any), employees, agents, attorneys, accountants, financial advisors, other representatives, subsidiaries, affiliates or any person who controls any of these within the meaning of the Securities Act of 1933, as amended or the Securities Exchange Act of 1934, as amended.

0.1.61 "Reserves" shall mean the Disputed Claims Reserve and Distribution.

0.1.62 "Schedules" means the Schedules and Statement of Financial Affairs filed by the Debtor with the clerk of the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as it has been or may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009.

0.1.63 "Secured Claim" means a Claim that is alleged to be secured, in whole or in part, (i) by a Lien in assets of the Debtor that is not subject to avoidance or subordination under the Bankruptcy Code or applicable non-bankruptcy law; or (ii) as a result of rights of setoff under section 553 of the Bankruptcy Code, but in any event only to the extent of the value, determined in accordance with section 506(a) of the Bankruptcy Code, of the holder's interest in the Estates' interest in property or to the extent of the amount subject to such setoff, as the case may be.

0.1.64 "Secured Tax Claim" means a Secured Claim of a Governmental Unit for taxes arising or accrued before the Petition Date.



0.1.65 "Subordinated Claim" means a Claim that is subordinated pursuant to sections 510(b) or 510(c) of the Bankruptcy Code, or by Order of the Bankruptcy Court.

0.1.66 "Unsecured Claim" means any Claim that is not an Administrative Expense Claim, a Priority Claim, a Priority Tax Claim, a Convenience Claim, a Secured Claim, a Secured Tax Claim, a Subordinated Claim, or an Equity Interest.

0.1.67 "Venturi" means Venturi Technologies, Inc.

0.1.68 "Voting Period" means the period established by the Bankruptcy Court within which Ballots shall be cast on the Plan.

## **ARTICLE II**

### **PROVISION FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS**

2.1 Treatment of Allowed Administrative Expense Claims. Each holder of an Allowed Administrative Expense Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim (i) the amount of such Allowed Administrative Expense Claim, in cash, on or as soon as practicable after the later of (a) the Effective Date, or (b) the date that is ten (10) Business Days after such Claim becomes an Allowed Administrative Expense Claim; or (ii) such other treatment as may be agreed upon in writing by the holder of such Claim and the Debtor.

2.2 Bar Date For The Filing And Assertion Of Administrative Expense Claims, Including Professional Claims But Excluding Ordinary Course Administrative Claims. All requests for payment or any other means of preserving and obtaining payment of Administrative Expense Claims that have not been paid, released or otherwise settled, including all requests for payment of



Professional Claims, other than Ordinary Course Administrative Claims, must be filed with the Bankruptcy Court and served upon the Debtor by the earlier of (i) forty-five (45) days after the Effective Date; or (ii) any applicable bar date established by the Bankruptcy Court and noticed separately by the Debtor. Any request for payment of Administrative Expense Claims that is not timely filed as set forth above will be forever disallowed and barred, and holders of such Claims will not be able to assert such Claims in any manner against the Debtor, or the Estate, provided, however, that Ordinary Course Administrative Claims shall be paid in the ordinary course of the Debtor's business and, if applicable, pursuant to the terms agreed upon by the Debtor and such Creditors.

2.3 Treatment of Allowed Priority Tax Claims. Each holder of an Allowed Priority Tax Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim (i) the amount of such Allowed Priority Tax Claim, in cash, on or as soon as practicable after the later of (a) the Initial Distribution Date, or (b) the date that is ten (10) Business Days after such Claim becomes an Allowed Priority Tax Claim; (ii) payment over a term not to exceed six (6) years from the date of assessment, in equal annual installments of principal, together with interest at eight and one half percent (8 ½%); or (iii) such other treatment as may be agreed upon in writing by the holder of such Claim and the Debtor.



### **ARTICLE III**

#### **CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

3.1 Creation of Classes. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Equity Interests. For purposes of organization, voting and all confirmation matters with respect to other Claims and Equity Interests, this Plan classifies the Claims against and the Equity Interests in the Debtor as follows:

- Class 1 - Allowed Administrative Claims
- Class 2 - Allowed Priority Claims
- Class 3 - Allowed Secured Claims of the DIP Lenders
- Class 4 - Allowed Other Secured Claims
- Class 5 - Allowed Claims of Franklin Funding
- Class 6 - Allowed Claims of MPI Noteholders
- Class 7 - Allowed Convenience Class Claims
- Class 8 - Allowed Unsecured Claims
- Class 9 - Allowed Equity Interests

3.2 Claims May Be in More Than One Class. An Allowed Claim is part of a particular Class only to the extent that the Allowed Claim qualifies within the definition of that Class and such Claim is part of a different Class to the extent that the remainder of the Claim qualifies within the description of a different Class.



## **ARTICLE IV**

### **IDENTIFICATION OF CLASSES OF CLAIMS AND EQUITY INTERESTS THAT ARE AND ARE NOT IMPAIRED UNDER THIS PLAN**

- 4.1 Classes of Claims Not Impaired. Classes 1, 2 and 4 are not impaired under this Plan.
- 4.2 Impaired Classes of Claims. Other than the Classes specified in Section 4.1 above, all other Classes of Claims and Equity Interests are impaired under this Plan.
- 4.3 Impairment Controversies. If a controversy arises as to whether any Class of Claims or Class of Equity Interests is impaired under this Plan, such Class shall be treated as specified in this Plan unless the Bankruptcy Court shall determine such controversy differently upon motion of the party challenging the characterization of a particular Class of Claims or Class of Equity Interests under this Plan.

## **ARTICLE V**

### **PROVISIONS FOR TREATMENT OF CLASSES OF CLAIMS AND EQUITY INTERESTS**

Section 5 hereof sets forth a designation of classes of Claims and Equity Interests. A Claim or Equity Interest is classified in a particular class only to the extent that the Claim or Equity Interest qualifies within the description of the class and is classified in a different class to the extent the Claim or Equity Interest qualifies within the description of that different class. If a Claim is acquired or transferred, the Claim shall be placed in the class in which it would have been placed if it were owned by the original holder of such Claim.

- 5.1 Class 1 -- Allowed Administrative Claims. Each holder of an Allowed Administrative Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim (i) the amount of such Allowed Administrative Claim, in cash, on or as soon as



practicable after the later of (a) the Initial Distribution Date, or (b) the date that is ten (10) Business Days after such Claim becomes an Allowed Administrative Claim; or (ii) such other treatment as may be agreed upon in writing by the holder of such Claim and the Debtor.

5.2 Class 2 -- Allowed Priority Claims. Each holder of an Allowed Priority Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim (i) the amount of such Allowed Priority Claim, in cash, on or as soon as practicable after the later of (a) the Initial Distribution Date, or (b) the date that is ten (10) Business Days after such Claim becomes an Allowed Priority Claim; or (ii) such other treatment as may be agreed upon in writing by the holder of such Claim and the Debtor.

5.3 Class 3 -- Allowed Secured Claims of DIP Lenders. On the Effective Date the DIP Lenders shall receive in full satisfaction, release and discharge of and in exchange for their Secured Claim, thirty-three and one-tenth percent (33.1%) of New Equity in the Reorganized Debtor. As stated in paragraphs 5.5 and 5.6, the DIP Lenders have agreed that certain Class 6 Claimants shall share in the New Equity.

5.4 Class 4 -- Allowed Other Secured Claims. Each holder of an Allowed Other Secured Claim shall receive in full satisfaction, release and discharge of and in exchange for such Secured Claim, at the Debtor's option either (i) the Collateral which secures its Allowed Secured Claim; or (ii) cash equal to the amount of such Allowed Other Secured Claim on or as soon as practicable after the later of (a) the Initial Distribution, or (b) the date that is ten (10) Business Days after such Claim becomes an Allowed Other Secured Claim. Upon satisfaction under (i) or (ii) above, all Liens and security interests asserted by the holder of such Allowed Other Secured Claim shall be extinguished and of no further force or effect. With respect to any Allowed Class 4 Secured Claim held by any ad  
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valorem taxing authority, as provided herein, such authority retains its liens until the date such Allowed Class 4 Claim is paid and if such ad valorem claim is not paid when due, such authority is entitled to accrue interest at the applicable statutory rate until paid.

5.5 Class 5 -- Allowed Claims of Franklin Funding. On the Effective Date confirming the plan constitutes a final and conclusive compromise with Franklin Funding. Franklin Funding shall receive, in full satisfaction of all past and future payments under the lease agreement, a thirty-seven and one-half percent (37.5%) of New Equity in the Reorganized Debtor. On the Effective Date all right, ownership and title to Franklin Funding's vehicles will be transferred to the Reorganized Debtor. As noted in paragraph 5.6 Franklin Funding has agreed that certain Class 6 Claimants shall share in the New Equity.

5.6 Class 6 -- Allowed Claims of MPI Note Holders. On the Effective Date, except as set forth below, each holder of an Allowed Class 6 Claim shall receive in full satisfaction of all claims against the Debtor their pro-rata share of twenty-one and four-tenths percent (21.4%) of New Equity in the Reorganized Debtor.

5.6.1 As part of the compromise with the Class 3, Class 5 and Class 6 Claimants, in lieu of New Equity, Lloyd Peterman and the Debtor have agreed to the following:

- A. Lloyd Peterman shall receive on the Effective Date in full satisfaction of all claims against the Debtor or any Debtor's Representative the following: (1) \$525,000 in cash; (2) a note in the amount of \$300,000 with interest at 8% amortized over two (2) years which provides Venturi the option to buy the note at a discount of 25% in months 1-12 and 10% in months 13-24; and (3) transfer of the sales & installation business, which includes all

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associated equipment and inventory (but excludes any receivables or payables) with an inventory level of \$75,000 (if less, the difference would be added to the cash amount, if the inventory was greater, the difference would be subtracted from the cash amount). A list of the assets of the sales and installation business is attached to the Disclosure Statement as Exhibit "G";

B. In addition, Mr. Peterman on the one hand and to Venturi and its Representatives on the other hand will execute a full and complete mutual release which mutual release includes, but is not limited to, any amounts due under Mr. Peterman's employment agreement, which employment agreement ( including the covenant not to compete as contained therein) would be terminated. Until such time as the employment agreement is terminated, Mr. Peterman will continue to be compensated per such agreement. The mutual release includes any and all claims and causes of action and Avoidance Actions, if any. Further, Mr. Peterman on the one hand and Mitch Martin and the other MPI Note Holders on the other hand will execute a full and complete mutual release.

C. If requested by Venturi, Mr. Peterman would work with Venturi to obtain support for its Plan from vendors.

D. Upon closing this agreement, Mr. Peterman would immediately be responsible for all administrative and technical costs for the S&I Business. Mr. Peterman would be required to remove the S&I Business assets from the S&I Business headquarters within ninety (90) days after the closing of this agreement.



E. Venturi agrees to assist Mr. Peterman in signing up new business up to the closing date of this agreement.

5.7 Class 7 -- Allowed Convenience Claims. Each holder of an Allowed Convenience Claim shall receive in full satisfaction, release and discharge of and in exchange for such Claim cash equal to one hundred percent (100%) of the amount of such Allowed Convenience Claim (provided, however, that in no event shall the aggregate amount of the distributions to the holders of Allowed Class 7 Claims exceed \$36,000.00). In the event the aggregate amount of all such Allowed Class 7 Claims exceed \$36,000.00, the Class 7 Claimants shall receive their Pro Rata Share of \$36,000.00. Regardless, distributions to Allowed Class 7 Claimants shall be made on or as soon as practicable after the later of (i) the Initial Distribution Date; or (ii) the date that is ten (10) Business Days after such Claim becomes an Allowed Convenience Claim.

5.8 Class 8 -- Allowed Unsecured Claims as of the Effective Date. On the Effective Date, holders of Allowed Unsecured Claims shall receive, in full satisfaction, release and discharge of and in exchange for such Claims, their Pro Rata Share of any cash distribution from the Class 8 Fund. It is anticipated that up to \$20,000 will be utilized by the Class 8 Disbursing Agent and his professionals to investigate Avoidance Actions and objections to Class 8 Claims to determine whether any further action should be taken. The timing, nature and extent of the distributions to be made to the holders of Allowed Unsecured Claims shall be by the Class 8 Disbursing Agent pursuant to the terms of this Plan. If the holders of Allowed Class 8 Claims vote to accept the Plan and the Court confirms this Plan, the holders of the Bridge Loan and Carl M. and Marie T. Bouckaert shall waive any and all distributions they would otherwise receive on account of such Claims. If the holders of Allowed Class 8 Claims do not vote to accept the Plan, then the holders of the Bridge

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Loan and Carl M. and Marie T. Bouckaert shall be entitled to assert their Claims against the Class 8 Fund.

5.9 Class 9 -- Allowed Equity Interests. On the Effective Date, all Equity Interests of the Debtor shall be canceled. There shall be no distributions under the Plan on account of Equity Interests.

5.10 Allowance of Contingent Claims. Pursuant to section 502(e) of the Bankruptcy Code, on or before the Effective Date the Debtor may seek the estimation of each Contingent Claim. Any estimation of a Contingent Claim shall constitute a final determination of such Claim for all purposes. To the extent a Contingent Claim becomes an Allowed Claim, it shall receive the treatment for the particular type of Claim set forth in Article V of this Plan in the amount estimated by the Bankruptcy Court.

## **ARTICLE VI**

### **ACCEPTANCE OR REJECTION OF PLAN; CRAMDOWN**

6.0 Classes and Claims Entitled to Vote. Each holder of an impaired Claim shall either be entitled to vote to accept or reject this Plan. Classes of Claims not impaired under this Plan shall not be entitled to vote to accept or reject this Plan and shall be presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Classes 1, 2 and 4 are not impaired and hence are presumed to have accepted this Plan. Classes 3 and 5 through 8 are impaired and therefore are entitled to vote to accept or reject this Plan. Class 9 is impaired and is presumed to have rejected this Plan pursuant to Section 1126(g) and no votes will be solicited from Class 9.

6.1 Cramdown. If all applicable requirements for confirmation of this Plan are met as

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set forth in sections 1129(a)(1) through (13) of the Bankruptcy Code, except for subsection (8), the Debtor shall request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, so long as at least one impaired Class of Claims has accepted this Plan, on the basis that this Plan is fair and equitable and does not discriminate unfairly with respect to any non-accepting impaired Class.

## **ARTICLE VII**

### **PROVISIONS FOR THE RESOLUTION OF OBJECTIONS TO CLAIMS AND EQUITY INTERESTS**

7.1 Objections to Claims. Following the Effective Date, the Class 8 Disbursing Agent as to Class 8 Claims, and the Debtor or Reorganized Debtor as to all other claims, shall have the exclusive authority to object to Claims so as to have the Bankruptcy Court determine the Allowed amount, if any, of such Claims to be paid under this Plan. Objection to the allowance of a Claim must be filed with the Bankruptcy Court and served upon the holder of the Claim no later than one hundred eighty (180) days after the Effective Date or such other date set by order of the Bankruptcy Court. Prior to the expiration of thirty (30) days from the date of service of the objection, the Claimant whose Claim was the subject of the objection must file with the Bankruptcy Court and serve upon the director a response to the objection. Failure to file and serve such a response within the thirty (30) days shall cause the Bankruptcy Court to enter a default judgment against the non-responding Claimant and thereby grant the relief requested in the objection.

7.2 Amendments to Claims; Claims Filed After the Confirmation Date. Except as otherwise provided in the Plan, a Claim may not be filed with the Bankruptcy Court or amended after the Confirmation Date without the prior authorization of the Bankruptcy Court. Except as otherwise provided in the Plan, any new or amended Claim filed with the Bankruptcy Court after the



Confirmation Date shall be deemed disallowed in full and expunged without any action by the Debtor. Nothing herein shall affect, amend or modify the Bar Date in this Case.

## **ARTICLE VIII**

### **A. FUNDING OF DISTRIBUTIONS AND PROVISIONS FOR TREATMENT OF DISPUTED CLAIMS**

8.1 Establishment of Reserves. On the Effective Date, the Debtor shall establish and fund the following reserves in the following order: (i) the Disputed Claims Reserve (ii) the Distribution Reserve; and (iii) the Class 8 Fund.

8.1.1 The Debtor shall fund the Disputed Claims Reserve with cash in an amount sufficient to pay (i) the full amount of all anticipated and/or Disputed Administrative Expense Claims and Disputed Priority Tax Claims, (ii) the asserted amount of all Disputed Convenience Claims; and (iii) any other amount that the Debtor, in its sole discretion, deems necessary and appropriate.

8.1.2 The Debtor shall fund the Distribution Reserve with sufficient cash to pay (i) in full all Allowed Administrative Expense Claims; (ii) all Allowed Priority Tax Claims and Allowed Claims in Classes 1, 2, and 4 (to the extent the Debtor elects to pay such Class 4 Claims); and (iii) the maximum amount of all Allowed Convenience Claims.

8.1.3 The Debtor shall fund the Class 8 Fund.

8.2 Disbursing Agent. The Debtor, or an agent employed by the Debtor shall serve as the disbursing agent and shall make all distributions provided for under this Plan.

8.3 Distributions. The Initial Distribution Date shall be within thirty (30) days following the Effective Date of the Plan, or as soon as practicable thereafter, but in no event later than ninety (90) business days after the Effective Date. On the Initial Distribution Date, the Debtor shall make



the Initial Distribution from the Distribution Reserve and the Class 8 Fund. On the Initial Distribution Date, the Debtor shall use the Distribution Reserve to pay holders of (i) Allowed Administrative Expense Claims; (ii) Allowed Priority Tax Claims and Allowed Claims in Classes 1, 2, and 4 (except to the extent the Debtor elects to return the Collateral securing the Lien of the allowed Class 4 Claimant).

## **B. DISTRIBUTIONS TO DISPUTED CLAIMS**

After the Initial Distribution Date, as set forth under Section 8.3, which shall control the method of making the Initial Distribution, the Debtor shall make distributions as follows:

8.4 Payments. Payments from the Class 8 Fund shall be made to holders of Allowed Unsecured Claims based upon their Pro Rata Share of the total Allowed Unsecured Claims. Following the Initial Distribution, the Debtor shall make distributions from the Class 8 Fund to holders of Allowed Unsecured Claims semiannually; provided, however, that in order to meet Claims and contingent liabilities (including Disputed Claims), if the amount of cash in any reserve is less than twenty-five thousand dollars (\$25,000.00) at the time when a semi-annual distribution otherwise would be made, the Debtor shall not be required to make the distribution from the particular reserve that has insufficient funds until the next semi-annual distribution date on which there is at least twenty-five thousand dollars (\$25,000.00) in cash in such reserve.

8.5 Disputed Claims. When a Disputed Claim becomes an Allowed Claim, the Debtor shall make to the holder of such Claim, from the Disputed Claims Reserve, a distribution equal to the distribution that would have been made to such holder with respect to such Claim if such Claim previously had been an Allowed Claim. Thereafter, unless previously paid in full, the newly Allowed Claim shall be paid from the Distribution Reserve in the same manner as all other Allowed

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Claims of the same Class. When all Disputed Claims have been resolved by Final Order, all remaining cash or property in the Disputed Claims Reserve shall be transferred to the Reorganized Debtor.

8.6 Disputed Payments or Distributions. In the event of any dispute between or among Claimants as to the right of any Person to receive or retain any distribution to be made to such Claimant under the Plan, the Debtor may, in lieu of making such distribution to such Entity, make it instead into an escrow for payment or distribution as ordered by the Bankruptcy Court or as the interested parties to such dispute may otherwise agree among themselves. Any Claimant that fails to raise such dispute pursuant to this Section 8 of this Plan by filing an appropriate request for relief with the Bankruptcy Court prior to the issuance of such disputed distribution by the Debtor shall be deemed to have forever waived any right to dispute such distribution or to restrict the use of such distribution.

8.7 Minimum Distribution. Notwithstanding anything to the contrary in this Plan, except as the Allowed Class 7 claims, the Debtor shall not be required to make distribution of less than one hundred dollars (\$100.00) to any Claimant unless such distribution is the Final Distribution to such Claimant.

8.8 Setoff. The Debtor shall set off against any Claim, and the distributions to be made pursuant to this Plan with respect to such Claim, claims of any nature whatsoever that the Debtor or the Estate may have against the Claimant of such Claim. Notwithstanding the foregoing, the failure to effect such a set off will not constitute a waiver or release by the Debtor or the Estate of any such Claim against such holder.

## **ARTICLE IX**

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## **IMPLEMENTATION AND MEANS OF CONSUMMATING THIS PLAN**

9.1 Privatization of Corporate Entity. On the Effective Date, the Reorganized Debtor shall become a private corporate entity. The Debtor shall take all actions necessary or appropriate to effect the privatization of the Debtor under the state law where the Reorganized Debtor is incorporated. All applicable regulatory or governmental agencies shall take all steps necessary to allow and effect the prompt privatization of the Debtor as provided herein, without the payment of any fee, tax or charge and without need for the filing of reports or certificates. Notwithstanding the foregoing, Venturi and/or the Reorganized Debtor will file any and all reports required by the Securities and Exchange Commission to evidence its change of status from a public to a private entity.

9.2 Vesting of Property in the Class 8 Disbursing Agent and the Reorganized Debtor. On the Effective Date, pursuant to Section 1141(b) and except for (i) the distribution to be made to holders of Allowed Claims as set forth in this Plan and (ii) Avoidance Actions which shall vest in the Class 8 Disbursing Agent, all of the property of the Estate shall vest in the Reorganized Debtor, including the claims, rights, causes of action, defenses, and other matters of this Plan, free and clear of any and all Claims, Liens, contractually imposed restrictions, equitable Claims or rights, to the fullest extent possible pursuant to Section 1141(c) of the Bankruptcy Code.

9.3 The Reorganized Debtor and Class 8 Disbursing Agent. The Class 8 Disbursing Agent will be the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code for all Avoidance Actions and objections to Class 8 Claims. The Reorganized Debtor will be the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code for all other matters.

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9.4 Responsibilities. Except for those responsibilities set forth for the Class 8 Disbursing Agent, the Reorganized Debtor's responsibilities shall include, (i) the pursuit of objections to, estimations and settlements of Disputed Claims; (ii) investigation, analysis, prosecution, and if necessary and appropriate, compromise of the Claims and causes of action and non-bankruptcy causes of action against third parties; (iii) calculation and implementation of distributions to be made under this Plan to holders of Allowed Claims; (iv) filing all required tax returns and paying taxes and all other obligations of the Reorganized Debtor; (v) filing all required tax returns for the Debtor; and (vi) such other responsibilities as may be vested in the Debtor pursuant to the Plan, orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan.

9.5 Compensation. In addition to reimbursement for the actual reasonable and necessary expenses incurred, the Reorganized Debtor, and any employees, agents, consultants, or professionals engaged or retained by the Reorganized Debtor, shall be entitled to reasonable compensation for services rendered in connection with performance of the duties of the Reorganized Debtor as set forth above. With respect to any agents, consultants or employees engaged and professionals retained by the Reorganized Debtor, such compensation shall be in an amount and on such terms as may be agreed to by the Reorganized Debtor and such agents, consultants, employees, or professionals without the necessity of Bankruptcy Court approval of any such retention or compensation.

9.6 Class 8 Disbursing Agent's Powers. The Class 8 Disbursing Agent will serve without bond. In addition to any authority granted to a trustee under the Bankruptcy Code, the Class 8 Disbursing Agent will have power, without Court approval, to:

- a. Receive, hold, invest and distribute all of the Class 8 Fund;

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- b. Pay and discharge such reasonable and necessary costs, expenses or obligations deemed required to preserve the Class 8 Fund or any part thereof;
- c. Deposit funds, draw checks and make disbursements;
- d. Employ such attorneys, accountants and other personnel as, in his/her sole discretion, are necessary to consummate the Plan, administer the Class 8 Fund and to compensate such persons from the Class 8 Fund;
- e. Exercise any and all powers granted Trustees by common law or any statutes, including every power granted Trustees by the Texas Trust Code (Tex. Rev. Civ. Stat. Ann., Property Code § 112 et seq. 1983), or any future amendment thereof, which serves to increase the extent of the powers granted to the Class 8 Disbursing Agent hereunder, and to that extent the laws of the State of Texas will govern or be controlling;
- f. In general, without limiting any of the foregoing, deal with the Class 8 Fund or any parts thereof in all other ways as would be lawful for any person owning the same to deal therewith, whether similar to or different from the ways above specified, at any time or times hereinafter;
- g. Bring suit against any person or party in any court of competent jurisdiction;
- h. Settle, compromise or adjust by arbitration or otherwise any disputes or controversies regarding the property of the Class 8 Fund or the Class 8 Claims;
- i. Appoint, employ, remove and act through agents, managers and employees and confer upon them such power and authority as may be necessary or advisable;



- j. Continue to collect the Class 8 Fund and deposit same in insured, interest-bearing accounts;
- k. Take any action or perform any act authorized by the Bankruptcy Code or the Bankruptcy Court or applicable statutory or common law to realize, to the greatest extent possible, the maximum fair value of property of the Class 8 Fund and to preserve and protect the Class 8 Fund;
- l. Take any action or perform any act necessary to implement this Plan;
- m. Institute litigation and pursue causes of action that the Class 8 Disbursing Agent believes are reasonably likely to enhance the value of the Class 8 Fund; and
- n. Determine whether a Creditor electing to be included in Class 8 is eligible to be included in that class of Claims.

9.7 Class 8 Disbursing Agent's Compensation. The Class 8 Disbursing Agent will be compensated semiannually for all services rendered under the confirmed Plan. The Class 8 Disbursing Agent's compensation will be five (5%) percent of all monies paid out or otherwise disbursed, plus reimbursement for actual out-of-pocket expenses generally found as reasonable and necessary under Sections 326 and 330 of the Bankruptcy Code.

9.8 Management of the Class 8 Assets. The Class 8 Disbursing Agent will deposit all of the liquidated Class 8 assets he receives in an insured interest bearing account or accounts. The Class 8 Disbursing Agent will make disbursements as provided under the Plan from the liquidated Class 8 Fund to the holders of Allowed Class 8 Claims.

9.9 Books, Records and Expenses. The Class 8 Disbursing Agent as part of his duties



shall manage the Class 8 Fund. The following specially describes those duties:

- (a) Maintenance of Records. The Class 8 Disbursing Agent will keep or cause to be kept books containing a description of the assets held under his authority and an accounting of all receipts and disbursements, which records will be open to inspection by any party in interest at all reasonable times.
- (b) Expenses. All costs, expenses and obligations incurred by the Class 8 Disbursing Agent in performing his duties under the Plan, will be a charge against the Class 8 Fund. Such expenses will be paid prior to the payment of Allowed Class 8 Claims.
- (c) Limitation on the Class 8 Disbursing Agent's Liability. The Class 8 Disbursing Agent shall not be liable for any action or failure to act hereunder in the absence of proof of bad faith or gross negligence. If the Class 8 Disbursing Agent, by refusal, incapacity or otherwise, fails to perform his duties hereunder, the Bankruptcy Court shall appoint a successor Class 8 Disbursing Agent. The Class 8 Disbursing Agent will not be liable for the non-receipt of notice and correspondence by Creditors due to a change of address from the schedules filed by the Debtor or proofs of Claim filed with the Bankruptcy Court unless properly notified in accordance with the Bankruptcy Rules and Code. Additionally, the Class



8 Disbursing Agent will not be liable for acts within his discretion which are reasonable with respect to implementing the Plan or which are based on the advice of attorneys and accountants which he has retained.

9.10 Method of Distribution Under the Plan. The Class 8 Disbursing Agent shall make payments of account of the Allowed Class 8 Claims in cash at such times and from time to times as sufficient funds have accumulated in the Disbursement Account(s) to make a meaningful disbursement. All Cash distributions are to be made by the Class 8 Disbursing Agent. The Class 8 Disbursing Agent shall establish such account or accounts as may be necessary to carry out the Plan. Distributions made by check or wire transfer and any distributions not negotiated or claimed within sixty days of the date of such distribution shall be void. Claimants who fail to timely negotiate distribution checks or claim a wire transfer shall be deemed to have waived their claim to that and all future distributions, and no future distributions shall be made to them; however, such Claimant may give written notice to receive future distributions after failing to timely negotiate a check or claim a wire transfer. However, this shall not entitle claimant to recover amounts paid out in distributions made prior to such notice.

9.11 Investment of Cash. Cash held in the Distribution Account(s) shall be invested by the Class 8 Disbursing Agent in the United States treasury bills, interest bearing certificates of deposit, interest bearing savings accounts, and investments permitted by section 345 of the Bankruptcy Code or such other manner of investment that may be appropriate from time to time as authorized by the United States Trustee for the Southern District of Texas, using his best efforts to maximize the rates of interest without increasing the risk of the investment. All interest earned



on such Cash shall be held by the Class 8 Disbursing Agent and distributed as part of the Class 8 Fund in accordance with the Plan.

9.12 Manner of Payment Under the Plan. Any payment of Cash made by the Class 8 Disbursing Agent pursuant to the Plan may be made either by check drawn on a domestic bank account or by wire transfer from a domestic bank account at the option of the Class 8 Disbursing Agent.

9.13 Setoffs. The Class 8 Disbursing Agent may, but shall not be required to, set off against any Claim and the payments to be made under the Plan, a Claim that the Debtor may have against the Claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or Class 8 Disbursing Agent of any such Claim the Debtor may have against such Claimant.

9.14 De Minimis Distributions. No cash payment of less than five dollars (\$5.00) shall be made by the Class 8 Disbursing Agent to any Creditor. Such payment will be held for the Claimant until such time as the amount of the distribution exceeds \$5.00, or in the event the amount never reaches \$5.00, the Disbursing Agent shall hold such distribution until a final distribution is made.

9.15 Saturday, Sunday, or Legal Holiday. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.



## ARTICLE X

### **EXECUTORY CONTRACTS**

10.1 Claims for Rejection Damages. Proofs of Claim for damages allegedly arising from the rejection, pursuant to this Plan or the Confirmation Order, of any Executory Contract to which a Claimant is a party must be filed with the Bankruptcy Court and served on the Debtor not later than thirty (30) days after the Effective Date. All proofs of Claim for such damages not timely filed and properly served as prescribed herein shall be forever barred and the holder of such a Claim shall not be entitled to participate in any distribution under the Plan.

10.2 Objections to Proofs of Claim Based On Rejection Damages. The Debtor shall have the exclusive authority to file an objection to any proof of Claim based on the rejection of an Executory Contract pursuant to this Plan. The objection to any such proof of Claim shall be filed not later than sixty (60) days after the later of (i) the date that such proof of Claim is filed, or (ii) the Effective Date.

10.3 Rejection of Contracts. All leases and Executory Contracts which are not (i) assumed or the subject of a motion to assume as of the Confirmation Hearing, or (ii) on Exhibit "D" to the Disclosure Statement, shall be rejected by the Debtor.

10.4 Proposed Cure Amounts For Assumed Contracts. Exhibit "D" to the Disclosure Statement may set forth the amounts, if any, that the Debtor believes to be necessary to be paid in order to cure any existing defaults or arrearages under the Executory Contracts. Such amounts, or such other amounts determined by the Bankruptcy Court pursuant to an objection by a party to an Executory Contract such objection to be filed on or before the Confirmation Date, shall be paid on the Effective Date of the Plan or as soon thereafter as reasonably practicable, in full satisfaction,

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release and discharge of and in exchange for any and all Claims for amounts necessary to cure any existing defaults or arrearages under the Executory Contracts.

## **ARTICLE XI**

### **CONDITIONS PRECEDENT**

11.1 Conditions Precedent to Effective Date. The Plan shall not become effective and operative unless and until the Effective Date occurs. The Effective Date shall occur after the following conditions have been satisfied;

11.1.1 The Confirmation Order shall have become a Final Order; and

11.1.2 All documents effectuating the Plan shall have been executed and delivered by the parties thereto, and all conditions to the effectiveness of such documents shall have been satisfied or waived as provided therein.

11.2 Non-Occurrence of the Effective Date. If the Plan is confirmed but the Effective Date does not occur within ninety (90) days after Confirmation Date, unless otherwise ordered by the Bankruptcy Court, (i) the Confirmation Order shall be deemed vacated; (ii) all bar dates and deadlines established by the Plan or the Confirmation Order shall be deemed vacated; (iii) the Bankruptcy Case will continue as if confirmation of the Plan had not occurred; and (iv) the Plan will be of no further force and effect, with the result that the parties in interest will be returned to the same position as if confirmation had not occurred. The failure of the Effective Date to occur shall not affect the validity of any order entered in the Bankruptcy Case other than the Confirmation Order.

11.3 Notice of the Effective Date. On or before ten (10) Business Days after occurrence of the Effective Date, the Debtor shall mail or cause to be mailed to all holders of Claims and Equity

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Interests a Notice that informs such holders of: (i) entry of the Confirmation Order; (ii) the occurrence of the Effective Date; (iii) the deadline established under this Plan for the filing of Administrative Expense Claims; (iv) the identity and amount of any assumed Claims or liabilities and (v) such other matters as the Debtor deems to be appropriate.

## **ARTICLE XII**

### **EFFECTS OF PLAN CONFIRMATION**

12.1 Discharge of Claims and Equity Interests. Pursuant to section 1141(d) of the Bankruptcy Code, except as otherwise provided in the Plan, the entry of the Confirmation Order shall and shall be deemed to: (1) discharge the Debtor from any debt that arose before the date of such Confirmation Order; and (2) terminate the rights of all holders of Equity Interests.

12.2 Injunction. Provided that the Effective Date occurs, the entry of the Confirmation Order shall and shall be deemed to permanently enjoin all Persons that have held, currently hold or may hold a Claim or other debt or liability against the Estate, or who have held, currently hold or may hold an Equity Interest in the Debtor, from taking any of the following actions on account of such Claim or Equity Interest: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against the Debtor or Debtor's Representative or the Estate; (ii) enforcing, levying, attaching, collecting, or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, Debtor's Representative, or the Estate; (iii) creating, perfecting or enforcing in any manner directly or indirectly, any lien, charge or encumbrance of any kind against the Debtor or the Estate; (iv) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtor, Debtor's Representative, or the

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Estate; and (v) proceeding in any manner in any place whatsoever against the Debtor, Debtor's Representative and the Estate. The injunction provided for in the Plan only affects assets, claims and causes of action owned by the Estate.

12.3 Pre-petition Lawsuits. On the Effective Date, all pre-petition lawsuits, litigation, administrative actions or other proceedings, judicial or administrative, in connection with the assertion of a Claim, shall be dismissed as to the Debtor, and Debtor's Representative, and stayed as to any action against an applicable insurance company. Such dismissal shall be with prejudice to the assertion of such Claim in any manner other than as prescribed by the Plan. Confirmation of the Plan and entry of the Confirmation Order shall have no effect on insurance policies of the Debtor.

12.4 No Liability for Solicitation or Participation. Pursuant to section 1125(e) of the Bankruptcy Code, Persons that solicit acceptances or rejections of this Plan and/or that participate in the offer, issuance, sale, or purchase of securities offered or sold under this Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or the offer, issuance, sale, or purchase of securities.

12.5 Release and Limitation of Liability of Exculpated Persons. The Exculpated Persons shall not have or incur any liability to any Person for any act taken or omission made in good faith in connection with or in any way related to negotiating, formulating, implementing, confirming, or consummating this Plan, the Disclosure Statement, or any contract, instrument, filings with governmental agencies, release, or other agreement or document created in connection with or related to this Plan or the administration of the Bankruptcy Case, nor with respect to any liability,

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claim or cause of action, whether known or unknown, asserted or unasserted, belonging to or assertable by the Debtor or Estate against the Exculpated Persons, from the beginning of time until the Effective Date. The Exculpated Persons shall have no liability to any Person for actions taken in good faith under or relating to this Plan, or in connection with the administration of the Bankruptcy Case including, without limitation, failure to obtain confirmation of this Plan or to satisfy any condition or conditions, or refusal to waive any condition or conditions precedent to confirmation or to the occurrence of the Effective Date. Further, the Exculpated Persons shall not have or incur any liability to any Person for any act or omission in connection with or arising out of their administration of this Plan or the property to be distributed under this Plan, except for gross negligence or willful misconduct as determined by the Bankruptcy Court. The Confirmation Order shall constitute a release of any and all Claims, causes of action, rights and interests against the Exculpated Persons, each of its members, and their respective officers, directors, agents, attorneys, advisors, accountants, employees and representatives held by, owned, or assertable by the Debtor or Estate, existing as of the Effective Date.

12.6 Indemnification by Debtor. The Debtor will indemnify, hold harmless and reimburse the Exculpated Persons from and against any and all losses, claims, causes of action, damages, fees, expenses, liabilities, and actions for which liability is limited pursuant to Section 12.4 of this Plan. All rights of the Exculpated Persons indemnified pursuant to this Section shall survive confirmation of this Plan.

12.7 Term of Injunctions and Stays. Unless otherwise provided, all injunctions or stays provided for in the Bankruptcy Case pursuant to sections 105 or 362 of the Bankruptcy Code or otherwise and in effect on the Confirmation Date shall remain in full force and effect until the

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Effective Date.

- 12.8 Release of Liens. Except as otherwise provided in this Plan or the Confirmation Order, all Liens, security interests, deeds of trust, or mortgages against property of the Estate shall and shall be deemed to be released, terminated, and nullified.

### **ARTICLE XIII**

#### **MODIFICATION, REVOCATION OR WITHDRAWAL OF THIS PLAN**

13.1 Modification of this Plan. The Debtor may alter, amend or modify this Plan under section 1127 of the Bankruptcy Code or as otherwise permitted by applicable law at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of this Plan, any party in interest in the Bankruptcy Cases may, so long as the treatment of holders of Claims or Equity Interests under this Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of this Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

13.2 Revocation or Withdrawal of this Plan. The Debtor reserves the right to jointly revoke or withdraw this Plan at any time prior to the Confirmation Date. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, this Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by

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or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

#### **ARTICLE XIV**

##### **PROCEDURES FOR RESOLVING AND TREATING CONTESTED AND DISPUTED CLAIMS UNDER THE PLAN**

14.1 Objection Deadline. As soon as practicable, but in no event later than six (6) months after the Effective Date, unless extended by order of the Bankruptcy Court, objections to Claims shall be filed with the Bankruptcy Court.

14.2 Prosecution of Objections. The Debtor, or with respect to Class 8 Claims the Class 8 Disbursing Agent, shall litigate to judgment, settle or withdraw objections to Disputed Claims. The right to object to a Claim may be assigned by the Debtor or the Class 8 Disbursing Agent to any entity providing for the liquidation and distribution of Claims under the terms of the Plan. The Debtor or Class 8 Disbursing Agent may invoke the Mandatory Claims Resolution Procedure as part of any Claim objection proceeding.

14.3 No Distributions Until Claim is an Allowed Claim. Notwithstanding any other provision of the Plan, no payment or distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

14.4 Voting Rights. Disputed Claims shall not be entitled to vote with respect to the Plan unless such Claim is estimated, for voting purposes, by order of the Bankruptcy Court.



14.5 Prohibition on Distributions Attributable to Claims While Any Avoidance Litigation is Pending. Neither the Debtor, Reorganized Debtor nor Class 8 Disbursing Agent shall make any distributions to a Claimant who is a defendant in a pending Avoidance Action, and shall make no distribution upon such Claim following resolution of the Avoidance Action except as provided by Bankruptcy Court order or upon dismissal of the Avoidance Action with no recovery upon behalf of the Debtor.

14.6 Mandatory Claims Resolution Procedure. Any Claim, at the request of the Debtor, Reorganized Debtor or Class 8 Disbursing Agent must be submitted to the Mandatory Claims Resolution Procedure outlined below. Any Claim, whether the subject of pre-petition litigation or other non-court resolution proceeding, may not be litigated in any forum other than the Bankruptcy Court, unless the Bankruptcy Court orders otherwise. On the Effective Date, the post-confirmation injunction under Bankruptcy Code Section 524 shall enjoin the commencement or continuation of any lawsuits or actions against the Debtor or any applicable insurance company on a Claim except as provided in the Plan. The Mandatory Claims Resolution Procedure shall provide for the following procedure, unless the Claim is otherwise resolved, for resolution of a Disputed Claim as follows:

(a) At the time of, or following the filing of, an objection to a Claim or upon any request for distribution under the terms of the Plan (regardless of whether the subject of a proof of claim), the Debtor, Reorganized Debtor or Class 8 Disbursing Agent may file a notice with the Bankruptcy Court, which shall invoke the procedure provided herein;

(b) At the time of the filing of the notice, all pending litigation regarding the specific objection to Claim or other dispute specified in



the notice shall be suspended and all existing deadlines relating to the objections, related discovery or any other related matter shall be tolled through and including the date of the initial pre-trial hearing provided below;

(c) The holder of the Claim, or authorized representative of such Creditor with authority to settle the claim objection, shall meet with a representative of the Debtor, Reorganized Debtor or Class 8 Disbursing Agent (and the insurance company, if applicable) to conduct a negotiation session concerning the Claim and the resolution of the pending objection to the Claim;

(d) If the objection is not resolved at or following the negotiation session provided above, a representative of the Debtor, Reorganized Debtor or Class 8 Disbursing Agent (and the insurance company, if applicable) and the Creditor (or authorized representative with authority to settle the Claim objection) shall attend a mediation session with a third-party mediator. The mediation shall be non-binding, unless otherwise agreed by the parties. The mediator's costs shall be borne equally by the Debtor, Reorganized Debtor or Class 8 Disbursing Agent (as applicable) and the holder of the Claim subject to objection; and

(e) If the Claim and objection or contest thereto is not resolved by the negotiating session and mediation session, the Creditor may request the Bankruptcy Court to schedule an initial pre-trial hearing



on the objection or other contest for the establishment of appropriate scheduling of applicable deadlines. The Creditor shall file, with such request, a certification that all of the procedures required herein have been completed in good faith by the Creditor, that the matter cannot be resolved without Bankruptcy Court intervention and that a trial on the merits is requested before the Bankruptcy Court.

## **ARTICLE XV**

### **RETENTION OF JURISDICTION**

15.1 Jurisdiction of Bankruptcy Court. Following the Effective Date, and notwithstanding the entry of the Confirmation Order, the Bankruptcy Court shall retain jurisdiction of the Bankruptcy Case and all matters arising in, or related to, the Bankruptcy Case to the fullest extent permitted by law, including jurisdiction to:

- 15.1.1 To hear and determine motions, applications, adversary proceedings, and contested matters pending or commenced after the Effective Date;
- 15.1.2 To hear and determine objections (whether filed before or after the Effective Date) to, or requests for estimation of, any Claim or Equity Interest, and to enter any order requiring the filing of proof of any Claim or Equity Interest before a particular date;
- 15.1.3 To ensure that distributions to holders of Allowed Claims and Allowed Equity Interests are accomplished as provided in the Plan;
- 15.1.4.1 To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;



- 15.1.5. To construe and to take any action to enforce this Plan and the Confirmation Order;
- 15.1.6 To issue such orders as may be necessary for the implementation, execution and consummation of this Plan and to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan and the Confirmation Order;
- 15.1.7 To hear and determine any applications to modify this Plan, to cure any defect or omission or to reconcile any inconsistency in this Plan, the Disclosure Statement or in any order of the Bankruptcy Court including, without limitation, the Confirmation Order;
- 15.1.8 To hear and determine all applications for Professional Claims;
- 15.1.9 To hear and determine other issues presented or arising under this Plan, including entitlement to the Reserves;
- 15.1.10 To determine such other matters and for such other purposes as may be provided in the Confirmation Order;
- 15.1.11 To hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code;
- 15.1.12 To enter the Final Decree; and
- 15.1.13 To hear and determine any action concerning the recovery of assets, wherever located; and to hear and determine any action concerning the determination of taxes, tax refunds, tax attributes, and tax benefits and similar or related matters with respect to the Debtor or the Estate including, without limitation, matters concerning federal, state and local taxes in accordance with sections



346, 505 and 1146 of the Bankruptcy Code.

15.2 Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction, over any matter arising under, arising in or related to the Bankruptcy Case, including with respect to the matters set forth above in Section 15.1 of this Plan, this Article shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

## **ARTICLE XVI**

### **MISCELLANEOUS PROVISIONS**

16.1 Payment of Statutory Fees. All U.S. trustee fees payable pursuant to section 1930 of Title 28 of the United States Code that accrue pre-confirmation, shall be paid on or before the Effective Date. The fees payable to the U.S. Trustee that accrue post-confirmation until the closing of the case shall be paid when they become due. The Debtor, Reorganized Debtor or Class 8 Disbursing Agent (as applicable) shall file quarterly distribution reports with the U.S. Trustee until the case is closed.

16.2 Retention of Actions and Defenses. All claims, rights, defenses, offsets, recoupments, causes of action, actions in equity, or otherwise, whether arising under the Bankruptcy Code or federal, state, or common law, which constitute property of the Estate within the meaning of section 541 of the Bankruptcy Code, as well as all claims, rights, defenses, offsets, recoupments, and causes of action arising under Chapter 5 of the Bankruptcy Code (including without limitation the Avoidance Actions) with respect to the Debtor, shall be and hereby are preserved for the benefit of the Reorganized Debtor, and/or the Class 8 Disbursing Agent and, to the extent not released pursuant to this Plan, shall be and hereby are transferred and assigned to the Reorganized Debtor or the Class 8 Disbursing Agent, as provided in the Plan, as of the Effective Date. Prosecution and



settlement of such claims, rights, defenses, and causes of action shall be the sole responsibility of the Reorganized Debtor or Class 8 Disbursing Agent, as applicable

16.3 Committee. The Committee shall cease operating and dissolve on the Effective Date.

16.4 Plan Controls. To the extent there is an inconsistency or ambiguity between any term or provision contained in the Disclosure Statement and the Plan, the terms and provisions of the Plan shall control.

16.5 Substantial Consummation of Plan. The Plan shall be deemed to be substantially consummated when the Debtor makes the Initial Distribution.

16.6 Successors and Assigns. The rights, benefits and obligations of any Person named or referred to in this Plan will be binding upon, and will inure to the benefit of, the heir, executor, administrator, representative, successor, or assign of such Person.

16.7 Severability. Should the Bankruptcy Court determine, on or prior to the Confirmation Date, that any provision of this Plan is either illegal or unenforceable on its face or illegal or unenforceable as applied to any Claim or Equity Interest, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and modify such provision to make it valid and enforceable to the maximum extent practicable and consistent with the original purpose of such provision. Notwithstanding any such determination, interpretation, or alteration, the remainder of the terms and provisions of this Plan shall remain in full force and effect.

16.8 Notices and Distributions. On and after the Effective Date, all notices, requests and distributions to a holder of a Claim or Equity Interest shall be sent to the last known address of (i) the holder or its attorney of record as reflected in the holder's proof of Claim or Administrative Expense Claim filed by or on behalf of such holder; or (ii) if there is no such evidence of a last known address, to the last known address of the holder according to the books and records of the



Debtor. Any holder of a Claim or Equity Interest may designate another address for the purposes of this Section by providing the Debtor written notice of such address, which notice will be effective upon receipt by the Debtor of the written designation. Such notices should be directed to Debtor's office at 6295 East 56<sup>th</sup> Avenue, Commerce City, Colorado 80022, or to Debtor's attorneys, Sheinfeld, Maley & Kay, P.C. at 1001 Fannin, Suite 3700, Houston, Texas 77002, attn.: Edward L. Ripley.

16.9 Unclaimed Property. If any property distributed by the Debtor remains unclaimed for a period of one (1) year after it has been delivered (or delivery has been attempted) or has otherwise been made available, such unclaimed property shall be forfeited by the Person entitled to receive the property and the unclaimed property and the right to receive it shall revert to and vest in the Reorganized Debtor free and clear of any rights, Claims or interests of such Person. The use of regular mail, postage prepaid, to the address determined in accord with section 16.8 shall constitute delivery for purposes of this Section.

16.10 Suspense Funds and Funds Subject to Escheat. Any benefit or obligation owing by the Debtor of funds that may be in suspense and attributable to a public or private entity, as to which no party has asserted a proof of claim in this proceeding, shall be considered unclaimed property, and such property shall revert to the Reorganized Debtor as provided in section 16.9 above.

16.11 Responsible Party Injunction. The Confirmation Order shall constitute and provide for an injunction by the Bankruptcy Court as of the Effective Date against any holder of a Priority Tax Claim from commencing or continuing any action against any responsible person or officer or director of the Debtor.

16.12 Disallowance and Subordination of Claims for Any Fine, Penalty, or Forfeiture, or Multiple, Exemplary, or Punitive Damages. The filing of this Plan and its submission to the holders



of Claims for any fine, penalty, or forfeiture, or multiple, exemplary, or punitive damages as referenced in section 726(a)(4) of the Bankruptcy Code shall constitute an action seeking to subordinate all such Claims pursuant to section 510 of the Bankruptcy Code. The Confirmation Order, except as provided herein, shall constitute an order subordinating such Claims to all other Claims pursuant to section 510 of the Bankruptcy Code.

16.13 Governing Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or by the general corporation law or the law of the jurisdiction of organization of any entity, the laws of the State of Texas shall govern the construction and implementation of the Plan and any agreements, documents and instruments executed in connection with the Plan or the Bankruptcy case, including the Plan documents, except as may otherwise be provided in such agreements, documents, instruments or the Plan.

16.14 Creditor Defaults. Any act or omission by a Creditor in contravention of a provision within this Plan shall be deemed an event of default under this Plan. Upon an event of default, the Debtor (or Reorganized Debtor) may seek to hold the defaulting party in contempt of the Confirmation Order. If such Creditor is found to be in default under the Plan, the Bankruptcy Court may (a) designate a party to appear, sign and/or accept the documents required under the Plan on behalf of the defaulting party, in accordance with Federal Rule of Civil Procedure, 70, or (b) make such other order as may be equitable that does not materially alter the terms of the Plan as it is confirmed.

16.15 Binding Effect. The Plan shall be binding on and inure to the benefit of the holders of Claims or Equity Interests (whether or not they have accepted the Plan) and their respective personal representatives, successors and assigns.



16.16 Withholding and Reporting. In connection with this Plan and all instruments issued in connection therewith and distributions thereon, the Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority and all distributions hereunder shall, to the extent applicable, be subject to any such withholding and reporting requirements. Notwithstanding anything herein to the contrary, in calculating and making the payments due to Allowed Claims hereunder, the Debtor shall be authorized to deduct from such payments any necessary withholding amount.

16.17 Other Documents And Actions. The Debtor, Reorganized Debtor or Class 8 Disbursing Agent may execute such documents and take such other action as is reasonable, necessary, or appropriate to effectuate the transactions provided for in this Plan.



## CONFIRMATION REQUEST

The Debtor hereby requests confirmation of this Plan pursuant to section 1129(a) of the Bankruptcy Code or, in the event that this Plan is not accepted by each of those Classes of Claims and Interests entitled to vote, section 1129(b) of the Bankruptcy Code.

Dated: August 1, 2001.

VENTURI

Debtor and Debtor-in-Possession

By: 

Name: Michael F. Dougherty

Title: President and Chief Executive Officer

By: 

Edward L. Ripley

Texas State Bar No. 16935950

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